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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-302

LEN H. SMALL, et al., etc.,
Appellants,

vs.

CHARLES PANGLE, KANKAKEE COUNTY TREASURER, et al., etc.,
Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

STATEMENT AS TO JURISDICTION

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APPEAL FROM THE SUPREME COURT OF ILLINOIS

STATEMENT AS TO JURISDICTION

The appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree of reversal in question, and should exercise such jurisdiction in this case.

OPINION BELOW

The Appellate Court of Illinois, Third District, delivered a written opinion, 17 Ill. App. 3rd 1082, which was reversed by the Supreme Court of Illinois, 60 Ill. 2d 510; Petition for rehearing denied May 29, 1975. Copies of these opinions, and of the final decree herein, are attached to this jurisdictional statement.

JURISDICTION

The appeal herein is from a final decree made and entered by the Supreme Court of Illinois.

The final decree appealed from was made and entered on March 14, 1975. An order denying a petition for rehearing was entered on May 29, 1975. Notice of appeal was filed in the Supreme Court of Illinois on August 26, 1975.

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment and decree complained of by the provisions of 28 U.S.C. §§1257(2) and 2101(c).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case. *Local 333B, United Marine Division of Intern. Longshoremen's Ass'n (A.F.L.)* v. *Battle,* D.C. Va. 1951, 101 F. Supp. 650, affirmed 342 U.S. 880; *Lake Erie, etc. R. Co.* v. *State Public Utilities Commission of Ill.,* 249 U.S. 422.

Involved in this action is the Constitution of the State of Illinois, Constitution of 1970, Article 9, Section 6, S.H.A.

and Section 19.7, as amended, Illinois Rev. Stat. 1971, Ch. 120, Par. 500.7, which implements the constitutional provision, which provide in pertinent part as follows:

"§6. Exemptions From Property Taxation

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits."

Chapter 120 of Ill. Rev. Stat.

"§500.7 Charitable institutions

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; and all free public libraries. The words 'old peoples homes' as used in this section shall include any old peoples home licensed by the State of Illinois and owned by a not-for-profit corporation or organization and operated not for profit under the auspices of a religious, fraternal, charitable or other non-profit organization which old peoples' home provides housing, meals, laundry and infirmary services to aged persons and which is financed wholly or in part by charges made to its residents or wholly or in part by endowment, gifts or bequests or by a combination of the foregoing. This definition shall be construed as declaratory of the existing law

and not as a new enactment. No hospital, however, which has been adjudicated by a court of competent jurisdiction to have denied admission to any person because of race, color or creed, shall be exempt from taxation."

QUESTIONS PRESENTED

The principal questions presented are:

I. Whether the above constitutional and statutory provisions, as interpreted by the Supreme Court of Illinois, impose more stringent requirements for tax exemption upon old people's homes than upon other facilities within the defined class of institutions using their property for exempt purposes without any reasonable basis for such disparity in treatment, and thereby denies Appellants the Equal Protection of the Law under the Fourteenth Amendment.

II. Whether the granting of tax exemption to health care facilities similar in type and operation to Appellants' home but financed under the Illinois Health Facilities Authority Act denies Appellants the Equal Protection of the Law based upon the arbitrary classification of method of financing.

STATEMENT OF THE CASE

The Appellants are seven individuals serving as Trustees appointed by the Circuit Court of Kankakee County, Illinois, to administer the "Old People's Home Trust of Kankakee, Illinois", a trust established by the will of Azariah Buck, deceased, for the purpose of the construction and operation of an old people's home for "all worthy poor people or those of limited means, and not able to properly

care for themselves, above the age of 60 years" and residents of Kankakee County, Illinois. The Trustees are required to report annually to the Circuit Court and, as a charity, are under the scrutiny of the Attorney General of Illinois. The original testamentary trust fund was augmented by subsequent substantial bequests from two other estates ($231,775 and $279,064 respectively). The Trust was judicially declared to be created for a "charitable purpose" in an earlier action. *Kelly* v. *Guild*, 42 Ill. App. 2d 143 (1963).

After considerable evaluation and exploration of the most feasible approach to executing the trust, the Trustees determined to construct a home "sufficiently large to be economically viable" so as to prevent operational costs from being excessive and, with express approval of the Circuit Court as to the proposed mortgage, size, location and general operational outline of the home, began construction of the home in 1969. At that time, the trust included the corpus and accumulated income from the Buck bequest plus the subsequent bequests noted above, aggregating approximately one million dollars ($993,149). A 20 year, seven percent, first mortgage was obtained for an additional $400,000 to start construction.

Virtually all of the trust fund was expended in the construction of the home, and two short term second mortgages in the amounts of $100,000 and $60,000 were thereafter obtained to complete construction and fully equip the home as planned. The Trust retains approximately fifty acres of land, the income from which is used to defray expenses of the home. The plan of operation of the home approved by the Court is one calculated to provide only enough funds from monthly fees paid by residents and patients and any trust income so as to meet the operational costs of the home other than depreciation, including re-

tirement of the mortgages over a period of years. No entrance or endowment fee is charged. The monthly charge includes meals and some services. The staff serves both a residential and a nursing home portion, although the nursing staff, which includes 24 hour registered nurse service, primarily serves the nursing wing, with occasional assistance to persons in the residential portion with such items as the administration of medicine, checking on illness and similar activities.

The policy of the home was that if a person unable to pay the full monthly fee were to apply for admission, the matter would be referred to the Trustees for decision, but this situation had not arisen at the time the matter was presented to the Circuit Court in early 1973. All rooms in the home were occupied, with seventy-seven residents or patients in December, 1972. Entry into the home is without discrimination as to nationality, politics, creed or religion. No person has been discharged by reason of inability to pay the expected monthly charge. The home contains sixty-eight modest sized rooms, sixteen of which are in the licensed skilled nursing home wing which is designed to serve residents who subsequently become ill or disabled.

The assessor and Board of Review of Kankakee County caused the home to be taxed and thereafter threatened to sell it in December, 1972, for delinquent taxes. On November 28, 1972, the Trustees commenced an action in Circuit Court to enjoin the sale on the grounds that the property was exempt as property of an "institution of public charity", property of "a beneficent and charitable organization" and as property of an "old people's home" all as provided in Section 500.7 of Chapter 120, Illinois Revised Statutes. A preliminary injunction was issued by the Court on December 5, 1972. A supplemental complaint was filed

by the Trustees on April 13, 1973, alleging two additional grounds for relief, the first based upon the fact that the 1972 Illinois legislature had enacted the Illinois Health Facilities Authority Act, effective October 1, 1972, which provides, *inter alia*, that licensed nursing homes and homes for the aged, and non-profit health service institutions subject to certification by the Secretary of Health, Education and Welfare may obtain financing or refinancing for the facility under the Act and thereby obtain specific property tax exemption under the terms of that Act. The supplemental complaint alleged this to be a denial of equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States and under Article I, Section 2, of the Constitution of the State of Illinois, in that the sole distinction between this home being denied exemption and homes granted specific exemption under the new Act was the method of financing (i.e. private versus public financing).

The second additional count alleged a similar violation of equal protection principles in that the Illinois Supreme Court, through a number of decisions in tax exemption cases, has imposed different requirements upon institutions *within the class* of institutions used exclusively for exempt purposes as defined by the Illinois Constitution and statutes, with specific reference to private schools, colleges, cemeteries and similar institutions. The gist of this discriminatory treatment lies in the imposing of different standards in that such other institutions operate in a similar manner to this home, i.e., partly on public or private gifts and in part on charges to beneficiaries of the services of the institution or organization, which beneficiaries are not required to be poverty stricken, yet such institutions have received tax exemption while the Trustees here have been denied exemption.

Opposing motions for summary judgment were presented to the Circuit Court, and it sustained the motion of the Trustees by memorandum opinion on July 13, 1973, granting tax exemption to the home, finding that the home was an institution of public charity and the property of an old people's home, bringing it within the purview of the exemption statute, Section 500.7. The Circuit Court further held that insofar as the Illinois Supreme Court had in prior cases "imposed requirements for the eligibility of not for profit old people's homes for tax exemption which are not imposed upon schools and other institutions named specifically in said §6 of Article 9 of the Illinois Constitution," such "more stringent requirements" denied the home "equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States of America." The Trial Court noted that the fact that the home imposed charges for the use of its facilities and that it had not received "paupers" did "not of itself remove it from the definition of a 'charitable trust' " under other prior holdings of the Illinois Supreme Court, and further noted that all of its funds and assets were derived either from gifts and contributions or from charges to residents, that no profit had ever inured to the benefit of anyone, and that any such "profit" would go to improving the facilities of the home or reducing charges.

The taxing officials appealed to the Illinois Appellate Court, Third District, which affirmed the Circuit Court ruling on March 29, 1974, noting particularly that the trust fund was virtually exhausted in building the home and the charges to residents did not include depreciation, and further that the charging of such resultant "reasonable rates" in order for the home to continue operation permitted "the elderly person of limited means to husband those means more wisely and postpones the day that such

person becomes a public charge." 309 N.E.2d 308, at p. 313. The Appellate Court did not reach nor discuss the equal protection question in view of its affirmance. The taxing officials subsequently appealed to the Illinois Supreme Court, resulting in the decision here appealed. The Appellants here continued to raise the Fourteenth Amendment equal protection argument at every stage of the proceeding.

THE FEDERAL QUESTION IS SUBSTANTIAL

A substantial federal question is involved here in that unsupportable distinctions between nonprofit organizations, in granting tax exemption, is clearly forbidden by the Equal Protection Clause of the Fourteenth Amendment. *WHYY, Inc.* v. *Borough of Glassboro,* 393 U.S. 117 (1968). In construing the provisions of the Illinois constitutional and statutory provisions granting tax exemption to institutions using their property for charitable purposes, the Illinois Supreme Court has singled out old people's homes and imposed upon them "more stringent requirements" for obtaining exemption than upon other members of the class. Also drawn into question is an "invidious discrimination" between similar facilities where the construction of one is financed by private free-will charitable contributions and the other is financed or subsidized by a government sponsored agency. *Harper* v. *Virginia Board of Elections,* 383 U.S. 663, 666. In view of the growing number of elderly persons seeking the beneficial services and healthful surroundings of modern congregate living facilities such as typified by the home for the aged involved here, it is vitally important that private contributions and support for their construction and operation not be dis-

couraged by "hostile or oppressive discrimination" against privately funded homes for the aged in the import and area of tax exemption. See *Madden* v. *Kentucky*, 309 U.S. 83. Resolution of the questions presented involves a complex and detailed review of a number of decisions and statutes, and a plenary review with briefs and argument should be granted.

I

As Interpreted by the Supreme Court of Illinois, Ill. Rev. Stat. 1971, Ch. 120, Par. 500.7 and Section 6, Article 9 of the Illinois Constitution Impose More Stringent Requirements for Tax Exemption Upon Old People's Homes Than Upon Other Facilities Within the Defined Class of Institutions, Using Their Property for Exempt Purposes So As to Deny Appellants' Home the Equal Protection of the Law Under the Fourteenth Amendment.

The Illinois Constitution divides the property which the legislature may exempt into *two classes*, to-wit: (1) property owned by state and other governmental units and (2) "property used exclusively for the purposes defined in the second clause" of the section, i.e.; property "used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes." *The People* v. *Trustees of Schools*, 364 Ill. 131, at p. 136 (1936). The legislature has implemented the exemption for the various institutions enumerated by specific legislation which creates no differing standards for determining eligibility. Thus, both the state constitution and the statute as written treat all institutions alike, imposing no different or varying standards on the various types of institutions within the class. However, in Illinois, as in most states, the judicial construction of a statute or constitutional

provision by the highest court of the state having jurisdiction to pass upon it, becomes as much a part of the law as if plainly written into it originally. *Ray Schools, Chicago, Inc.* v. *Cummins*, 12 Ill. 2d 376. What has developed over the years, is a series of Illinois Supreme Court decisions construing the exemption provisions *differently* within the class, and imposing more stringent requirements upon old people's homes than upon other types of exempt institutions.

An example of this disparity in requirements is the treatment afforded hospitals vis-a-vis old people's homes. A key factor cited by the Illinois Supreme Court in denying exemption here was the fact that the home was "self-sustaining" and its operating income "was derived almost entirely from the monthly rental charges" and not from outside charitable contributions (in earlier cases the Court had stated that a hallmark of a charitable institution was that it derived its funds "mainly" from charitable contributions). *Congregational Publishing Society* v. *Board of Review*, 290 Ill. 108. Yet, in *People ex rel. Cannon* v. *S. Ill. Hospital*, 404 Ill. 58 (1949), the Illinois Supreme Court *granted* charitable tax exemption to the hospital formed by four doctors, the institution deriving its operational funds from charges received from patients, with no evidence of any outside charitable contributions or support. The facts further indicate that not only was the hospital "self-sustaining" from an operational viewpoint, but that "proceeds over and above expenses" were "put back into the corporation for the expansion of services, equipment and the physical plant." (404 Ill. 70). In the present case the Court ignored the fact that the very substantial charitable contributions used to defray approximately two-thirds of the construction costs clearly result in reduced operational costs. All the residents and patients of the home are, in a very real sense, beneficiaries of these earlier

charitable gifts which serve to reduce the charges to them over the years.

The Illinois Supreme Court repeatedly has granted exemption to a number of institutions whose charges are designed to cover costs of operation. *School of Domestic Arts and Science* v. *Carr,* 322 Ill. 562 (1926) (private school); *Spring Hill Cemetery* v. *Ryan,* 20 Ill. 2d 608 (1960) (cemetery); *Sisters of Third Order of St. Francis* v. *Board of Review,* 231 Ill. 317 (1907) (hospital).

On numerous occasions the Illinois Supreme Court has held that it is not necessary to constitute a "public charity" that the recipients of the benefits be poor nor does the fact that the beneficiaries are "expected to have some means and to contribute to" the support of the institution deprive it of its charitable character; the conditions of old age, illness or other similar cause are, independently, separate bases for determining that a person is an appropriate "object of charity". *Continental Illinois Bank* v. *Harris,* 359 Ill. 86, at pages 94, 96:

> " 'Charity' in the legal sense, is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of happiness of man." *Continental Illinois Bank* v. *Harris,* supra, at page 92.

See also *People* v. *Morton,* 373 Ill. 72 (1940), granting charitable exemption to an arboretum created by a trust for the study and development of trees and plants, and *Congregational Publishing Society* v. *Board of Review,* 290 Ill. 108. The Statute of Charitable Uses (43 Eliz. Chap. 4), which treats the infirmity of age and of health as separate, distinct objects of charity not dependent upon an additional showing of poverty, is part of the common law of Illinois. *Continental Ill. Bank* v. *Harris,* supra.

Springfield Housing Authority v. *Overaker,* 390 Ill. 403, holds exempt a housing project for "low income" persons (not "poverty" cases), all of whom pay the expected rents. The federal government subsidized the construction and some of the operation. This case cannot be differentiated in substance—substituting aged and infirm elderly (most of whom live on fixed, limited incomes) for low income persons and private contributions for government subsidy, the case is identical (the fact that at an earlier date the Authority cleared slum areas has no relevance to the current use of the property for charitable purposes). The Illinois Supreme Court specifically based this holding on the same "charitable institution" provision as is involved here, but did not require a showing that *some* persons were permitted to live there free—all were expected to pay the rent charged.

The Courts are becoming increasingly sensitive to discriminatory state taxation schemes, and are considering the entire pattern and effect of the taxation method to see if different treatment is accorded persons based upon criteria "unrelated to the objective of the statute." See *Southern California Association of Seventh Day Adventist* v. *Franchise Tax Board,* 47 C.A. 3rd 207 (1975) and *Fiorito* v. *Jones,* 39 Ill. 2d 531 (1968). This Court is taking an increasingly activist role in looking into the actual purposes behind statutory classification schemes and is not accepting the "mere recitation of the benign, compensatory purpose" for a classification (*Weinberger* v. *Wiesenfeld,* 43 L.Ed.2d 514 [1975]), nor has it hesitated to strike down arbitrary state tax classifications. *WHYY* v. *Borough of Glassboro,* 393 U.S. 117. While states are accorded considerable leeway in taxation schemes affecting commercial interests (*Lenhausen* v. *Lake Shore Auto Parts Co.,* 410 U.S. 356) less reason exists for such latitude where a non-profit, judicially

regulated charitable trust seeks equal protection and treatment for its aged, infirm residents, who are clearly "objects of charity" under Illinois law, when compared with sick or injured persons in hospitals, students in schools, or elderly persons in government subsidized old people's homes. Particularly is this true where neither the State Constitution nor the statute *per se* classifies old people's homes as of a different class, but the discrimination arises from a series of judicial decisions announcing various requirements as tests of exemption, and then imposing those requirements in an uneven, rationally inconsistent manner, with the result that old people's homes are held to more stringent requirements than other *types* of exempt institutions.

II

The Granting of Tax Exemption to Health Care Facilities Similar in Type and Operation to Appellants' Home but Financed Under the Illinois Health Facilities Authority Act Denies Appellants the Equal Protection of the Law Based Upon the Arbitrary Classification of Method of Financing.

Forming the basis of this claim is the fact that had this home chosen to bring itself within the provisions of the Illinois Health Facilities Authority Act (Ill. Rev. Stat. 1973, ch. 111½, §§1101 *et seq.*), its property would be exempt from taxation. Section 1126. In summarily dismissing this claim, the state court noted: "We find that fact of little significance." It is respectfully submitted that the fact is indeed significant and constitutes a denial of equal protection under the laws.

The Health Facilities Authority Act was enacted by the legislature to provide alternate methods of financing to not-for-profit health institutions to aid them in providing

needed health facilities. Section 1106. Under its terms, a public instrumentality was created known as the Health Facilities Authority and charged with the function of issuing bonds and making loans to participating health institutions for the cost of constructing or refinancing health facilities. Included in the Act's definition of a health facility is any non-profit private institution, place or building required to be licensed under the nursing homes, sheltered care homes, and homes for the aged Act, Chapter 111½, §35.16a *et seq.*

Had the Trustees chosen to refinance the debt incurred for the construction of the home, they clearly would have been eligible under the terms of the Act to apply for assistance from the Authority. It was the legislature's express intent that all non-profit private health institutions be enabled to benefit from and participate in the provisions of the Act. To this end, all such institutions operating within the state were authorized to utilize the capital financing sources and methods of repayment provided by the Act. Section 1124. Therefore, the only point of distinction between this home and those institutions operating under the provisions of the Health Facilities Authority Act is the mode of financing chosen for their respective facilities. It is submitted that this is not a valid basis for the separate tax treatment afforded the institutions.

To distinguish between homes for the aged on the basis of whether they obtain construction loans from a state agency or a commercial lender is neither reasonable nor is it based on any difference in state policy towards the homes. Rather, the state court's decision serves to effectively defeat the objectives of both the charitable exemption statute, Chapter 120, §500.7, and the Health Facilities Authority Act.

The fundamental purpose of the charitable exemption embodied in Chapter 120, §500.7 is to further both the benefits conferred upon the public by the charitable institutions and the consequent relief upon the state to care for its citizens. *People ex rel. Marsters* v. *Rev. Saletyni Missionaries*, 409 Ill. 376, 99 N.E.2d 186 (1951). To deny the charitable exemption to homes for the aged which seek to finance their facilities with commercial loans will discourage private initiative and increase the state's burden to provide for its elderly.

More is involved here than the rights of the parties litigant. The public, and more specifically, those members of the public who reside in homes for the aged, are directly affected by the classification scheme created by the state court. If the decision of the Illinois Supreme Court stands, its effect will be to subject to property taxation those homes which have been constructed through private donations and with funds partially obtained from commercial lenders. Payment of this tax will deplete the resources available to the homes for normal operating expenses. As a result, they will be forced to either increase the rents of those residents able to pay, or to offer a reduction in the services offered to all residents. The imposition of a property tax will thus be borne indirectly by the residents of the homes. By contrast, no such indirect tax burden will be levied against those residents who by chance have elected to reside in a home constructed with funds borrowed from a state agency.

A classification scheme is clearly unreasonable which indirectly distinguishes between residents of homes for the aged on the basis of whether they live in a home financed through public or private channels.

CONCLUSION

For the reasons stated this Court should note probable jurisdiction and require briefs on the merits and oral argument.

Respectfully submitted,

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APPENDIX

IN THE SUPREME COURT OF ILLINOIS

Be It Remembered, *that afterwards, to-wit, on the* 24th *day of* March, 1975 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:*

No. 46725

Len H. Small, et al., etc.,
Appellees,
vs.
Charles L. Pangle, Kankakee County Treasurer, et al., etc.,
Appellants.

Appeal from Appellate Court Third District

MR. JUSTICE DAVIS delivered the opinion of the court:

The plaintiffs brought this action in the circuit court of Kankakee County to enjoin the county officials from levying, assessing and collecting real estate taxes on certain property used in the operation of an old people's home. The trial court granted summary judgment to the plaintiffs. The appellate court affirmed, holding that the real estate in question was exempt from taxation. (*Small v. Nelson* (1974), 17 Ill. App. 3d 1082.) We granted leave to appeal.

The basic issue presented is whether the property is exempt from taxation under section 6 of article IX

of the 1970 Illinois Constitution and under the provisions of section 19.7 of the Revenue Act of 1939, as amended, which implements the constitutional provision. Ill. Rev. Stat. 1971, ch. 120, par. 500.7.

The plaintiffs are trustees of a charitable trust. The trust owns and operates an old people's home called the Heritage House, which was constructed in 1970. Its value was set at about $1,155,000. Initial furnishing costs totaled approximately $100,000. Roughly $850,000 of the initial construction and furnishing costs were provided from the trust fund. The balance of the funds came from a first mortgage in the amount of $400,000. Since then additional junior mortgages, totaling $160,000 have been taken out, and a total of approximately $40,000 has been paid off against all of the mortgages.

As of the end of 1972, the trust for the operation of the Heritage House had $57,000 in current assets and $1,342,000 in property and equipment, after depreciation. Liabilities totaled $631,000. The operating income for the year 1972 totaled $465,000 and the operating expenses were $432,000.

There are 68 rooms in the Heritage House. Fifty-two rooms are provided for "residents" who are retired persons. Sixteen rooms are provided for "nursing residents," who require nursing care.

During 1972 the charges to "residents" ranged from $325 per month for an unfurnished semi-private one-room apartment to $615 per month for a furnished two-room private apartment. The charges to "nursing residents" varied from $560 per month to $975 per month. These charges included meals but excluded medication, certain nursing supplies, and other personal items. The average charge to an ambulatory resident totaled $425.36 per month, and the average charge to a nursing resident totaled $680.31.

The Heritage House is self-sustaining. There is an admissions committee, but the requirements of admission are not disclosed by the records. It appears, however, that the residents must meet health requirements, and they must be able to make the monthly-payment requirements. None of the patients is a public charge or in any special category of old-age or nursing assistance insofar as government funding is concerned. The situation has never arisen where a person who has applied for admission has been unable to make the monthly payments. Two families did move out because of the rate.

The agreement for residency is entered into between the trustees of the trust, the applicant, and a "responsible party." The latter may be either the applicant or a third party who agrees to pay the monthly and other charges imposed. At the inception of the agreement, such party must pay the first month's payment in advance and a deposit equal to two months' charges. The agreement provides that admission to the Heritage House will be on a nonsectarian basis, without distinction because of race, color or creed. It also provides that the management has the right to refuse admission or to discharge a resident without giving any reason or cause.

Section 19.7 of the Revenue Act of 1939, as amended, provides, in part:

> "All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; and all free public libraries. The words 'old peoples

homes' as used in this section shall include any old peoples home licensed by the State of Illinois and owned by a not-for-profit corporation or organization and operated not for profit under the auspices of a religious, fraternal, charitable or other non-profit organization which old peoples' home provides housing, meals, laundry and infirmary services to aged persons and which is financed wholly or in part by charges made to its residents or wholly or in part by endowment, gifts or bequests or by a combination of the foregoing. This definition shall be construed as declaratory of the existing law and not as a new enactment. No hospital, however, which has been adjudicated by a court of competent jurisdiction to have denied admission to any person because of race, color or creed shall be exempt from taxation." Ill. Rev. Stat. 1971, ch. 120, par. 500.7.

The right of the legislature to exempt real property from taxation arises under section 6 of article IX of the Illinois Constitution of 1970. This provides:

> "The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits."

The above is clearly nothing more than a rephrasing of a similar provision contained in section 3 of article IX of the Illinois Constitution of 1870. Those cases interpreting the permissive legislative exemptions under the Constitution of 1870 are equally relevant to the limits of exemption now constitutionally permitted.

The basic premise, that statutes providing exemption from taxation shall be strictly construed because article IX of the Constitution subjects all property to taxation (see *Wesley Willows v. Munson* (1969), 43 Ill.2d 203, 207), remains valid. Also see *People ex rel. Nordlund v. Winnebago Home for the Aged* (1968), 40 Ill.2d 91.

Three recent cases are dispositive of the issues presented in this case. In *Methodist Old Peoples Home v. Korzen* (1968), 39 Ill.2d 149, this court was presented with the identical basic issue. In *Korzen,* among other factors, applicants to the old people's home were required to submit detailed statements of their health, financial condition and personal history. They also were required to pay an entrance fee and monthly service charge, both of which were based upon the size and location of the quarters to which they were to be assigned. While the entrance fee varied from $6,000 to $25,000, the monthly charge ranged from $175 to $375. Nearly all of the funds were provided from the entrance and monthly service fees. The home was not required to continue to provide care and shelter for any resident who became unmanageable because of illness or unable to meet his monthly charge. Likewise there was no requirement to admit applicants who were unable to meet the typical charges imposed. It was not disputed that the plaintiff, a not-for-profit corporation was operating a not-for-profit old people's home licensed by the State of Illinois under the auspices of a religious organization.

We observed, in *Korzen,* that while this appears to fit the definition of "old people's home" as used in the statute, the statute could be no broader than permitted by the Constitution. The statute could not declare such property as being used exclusively for charitable purposes. It is the province of the court to make that determination.

(39 Ill.2d 149, 155-156). We thus concluded that section 19.7 of the Revenue Act of 1939 did not intend to state that old people's homes would be exempt from taxation without being used exclusively for charitable purposes. *Korzen* then furnished guidelines to determine if the uses to which property was being put were charitable. It was stated that a charitable use is one for the benefit of an indefinite number of persons; that its funds are derived mainly from public and private charity; that charity is dispensed to all who need and apply for it and without obstacles placed in the way of those who need and would avail themselves of the charitable benefits dispensed; and, finally, that the term "exclusively used" means the primary purpose for which property is used and not any secondary or incidental purpose. 39 Ill.2d 149, 157.

In *Korzen* we also stated that the mere charging of fees, including monthly charges, would not necessarily disqualify the property from charitable use. We observed, however, that varying the charge on the basis of the size and desirability of the facility or room did not suggest charitable use. The failure to admit those who are unable to pay the required fee did not suggest a charitable use. The main source of income resulting from current charges, rather than gifts, bequests and donations did not suggest a charitable use. The absence of a legal obligation to keep and maintain any person who became unable to fulfill his financial obligation or otherwise became sick or unmanageable did not indicate a charitable purpose. The observations made in *Korzen* are applicable to the case at bar.

In *People ex rel. Nordlund v. Winnebago Home for the Aged* (1968), 40 Ill.2d 91, we observed that applicants to the old people's home were required to be 65 years of age, to pay a $4,000 entrance fee, to be in reasonably good health and mentally capable, and to assign their

social security benefits and title to property to the association. Thereupon it became obligated to provide housing, medical care, food, and burial. The assets of the association were approximately 68% from gifts and endowments and 32% from contributions of the residents. Again, we noted that the organizational makeup and use of property appeared to conform to the statutory language contained in section 19.7 of the Revenue Act of 1939. We reiterated that the association must further comply unequivocally with the constitutional requirement of exclusive charitable use and that that determination is a judicial function, which may not be usurped by the legislature. 40 Ill.2d 91, 100.

We concluded that the requirement of a sizable admission fee and the assignment of assets could not be reconciled with the charitable requirement that benefits be applied to an indefinite number of people, that charity be dispensed to all who need and apply for it, that obstacles not be placed in the way of those who need and would avail themselves of the benefits provided. We noted that in its relatively long period of operation, the association had admitted only two people who could not pay its admission fee.

In *Wesley Willows v. Munson* (1969), 43 Ill.2d 203, the residents of the old people's home were required to pay an entrance fee varying from $9,000 to $20,500, depending upon the type of room and location to be assigned to the applicant. The monthly charges ranged from $200 upwards. There was no requirement that the home admit any person it found unable to pay the entrance fee or the monthly service charge. The home was not required to provide care or shelter for any person who might become unmanageable because of illness. We again observed that while the charging of the fee did not necessarily remove

the home from the categorization of a charitable institution, the allocation of living space based upon the amount of the fee, coupled with the other factors in the case, suggested that the home's primary concern was not the dispensing of charity, but rather the providing of suitable living quarters for those who could afford it.

The rationale of the foregoing cases is applicable to this case. Substantial monthly charges were paid by all of the residents of the home. Unlike the cited cases, an entrance fee was not required. We do not consider this distinction to be significant, particularly in view of the substantial monthly charges imposed and the requirement of a three-month payment at the inception of one's stay at the home. The operating income totaled $465,000, was derived almost entirely from the monthly rental charges, and was approximately $33,000 in excess of the operating expenses, exclusive of depreciation. It appears to us that the greatest source of funds is not from either private or public charity. The variance of the monthly charges, based upon size or location of a room, smacks of the practices found in the cited cases as being indicative of a noncharitable use. The fact that during its period of operation, the Heritage House has admitted no one who was apparently unable to pay the monthly charges; and the further fact that it has never had a resident who was unable to pay these substantial monthly charges, indicates that the property is not used for charitable purposes—the benefit of an indefinite number of people, and that financial obstacles are placed in the way of aged persons who may be needing the benefits that the home provides. We conclude that the property in question is not in fact exclusively used for charitable purposes.

Heritage House further claims that taxation of its property constitutes a denial of equal protection of the

laws in that if it chose to bring its property within the Illinois Health Facilities Authority Act (Ill. Rev. Stat. 1973, ch. 111½, par. 1101 *et seq.*) it could obtain exemption from taxation. We find that fact of little significance. (See *Lehnhausen v. Lakeshore Auto Parts Co.* (1973), 410 U.S. 356, 35 L. Ed. 2d 351, 93 S. Ct. 1001.) The significant factor here really is that if the Heritage House chose to use its property exclusively for a charitable purpose it likewise could obtain the benefits of exemption from taxation. This same factor is decisive of Heritage House's contention that it is denied equal protection of the laws in that it is treated differently from other charitable organizations. It points out that hospitals make charges to cover their operating expenses. As was pointed out herein, and in *Korzen*, *Winnebago* and *Munson*, the fact that an institution makes charges does not necessarily remove it from the classification of a charitable institution. Those who charge fees, yet admit persons who need and seek the benefits offered but are unable to pay the customary fees, do not lose their charitable character. Heritage House has not been denied equal protection of the laws. It merely has failed to come within the classification entitled to exemption.

In *Methodist Old Peoples Home v. Korzen* (1968), 39 Ill.2d 149, this court construed section 19.7 of the Revenue Act. What we said there is particularly applicable here. At page 156 this court stated:

> "In interpreting House Bill 1328 we must assume that the legislature did not intend to exceed its constitutional limitations. As we stated recently, 'it is our duty to construe acts of the legislature so as to uphold their constitutionality and validity if it can reasonably be done, and, further, that if their construction is doubtful, the doubt will be resolved in

favor of the validity of the law attacked.' *Illinois Crime Investigating Commission v. Buccieri*, 36 Ill.2d 556, 561. See also *MacMurray College v. Wright*, 38 Ill.2d 272; *Follett's Illinois Book and Supply Store, Inc. v. Isaacs*, 27 Ill.2d 600.

In keeping with such assumption we hold that the legislature did not intend to deviate from the constitutional requirement that to be exempt from taxation the property of an old peoples home must be used exclusively for charitable purposes. In amending section 19.7 of the Revenue Act of 1939 (Ill. Rev. Stat. 1965, ch. 120, par. 500.7) House Bill 1328 did nothing more than add language which was descriptive and illustrative of 'old people's homes.' Any doubts concerning this are dispelled by its statement that 'this definition shall be construed as declaratory of the existing law and not as a new enactment.' "

We are of the opinion that the trial court erred in granting summary judgment to the plaintiff, and that the trial court should have granted the defendants' motion for summary judgment. Accordingly, the judgment of the appellate court is reversed and the cause is remanded to the trial court for further proceedings consistent herewith.

Reversed and remanded, with directions.

MR. JUSTICE RYAN took no part in the consideration or decision of this case.

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* twelfth *day of* May *in the year of our Lord, one thousand nine hundred and* seventy-five, *within and for the State of Illinois.*

BE IT REMEMBERED, that, to-wit: on the 29th day of May, A. D. 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 46725

Len H. Small, Howard E. Schwark, Cyril F. Close, Earl F. Francis, Max Jaffe, Norman Strasma, and Edwin P. Bergeron, as Trustees,

Appellees,

vs.

Charles L. Pangle, Kankakee County Treasurer, and Edmund A. Soucie, Kankakee County Clerk,

Appellants.

Appeal from Appellate Court Third District 73-269
72 CH 3530

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 20th day of August, A.D. 1975.

/s/ Clell L. Woods
Clerk, Supreme Court of the
State of Illinois.

IN THE
SUPREME COURT OF THE STATE OF ILLINOIS

No. 46725

Notice of appeal filed August 26, 1975

LEN H. SMALL, et al., etc.,
Appellees,

vs.

CHARLES L. PANGLE, Kankakee County
Treasurer, et al., etc.,
Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed August 26, 1975)

Notice is hereby given that Len H. Small, et al., etc., the appellees above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois reversing an opinion entered in this action on March 14, 1975, rehearing denied May 29, 1975.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/ William E. Eaken
William E. Eaken
Suite 440, One Dearborn Square
Kankakee, Illinois 60901
Attorney for Appellees